

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS
Office of the Director, Legal Unit

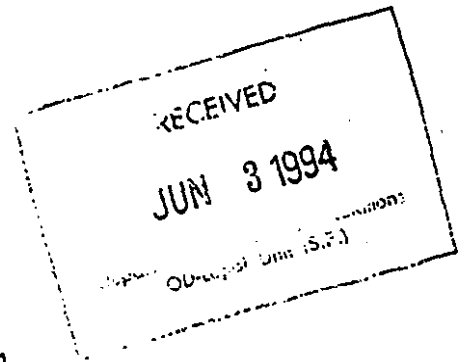
MEMORANDUM

TO: SIMON REYES
Assistant Chief, DLSE

FROM: LLOYD W. AUBRY, JR.
Director

DATE: May 31, 1994

SUBJECT: Public Works Case No.: 92-029
City of Redlands/Honeywell Corporation



This is in response to your request for a public works coverage determination for a project involving acquisition, installation and on-going maintenance of a heating/air conditioning system in various city buildings throughout the City of Redlands ("City"). Based on my review of the relevant facts and precedent, for the following reasons, it is my determination that this project is a public works.

Under Labor Code § 1720(a), a public works is defined as construction, demolition, alteration or repair work done under contract and paid for in whole or in part with public funds. Under § 1771, maintenance work is work for which prevailing wages must be paid. 8 California Code of Regulations 16000 defines maintenance, in pertinent part, as "(1) routine, recurring and usual work for the preservation...and keeping of any publicly owned or operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purpose in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired."

In this case, there is a contract between Honeywell and the City for the acquisition, installation and maintenance of a heating and air conditioning system in City buildings. That contract describes work which would constitute construction and maintenance.

The somewhat complicated financing arrangement is as follows. The City and Municipal Leasing Associates, Inc. ("MLA"), have entered into what is termed a Lease with Option to buy agreement. Under this agreement, MLA makes an approximately \$ 2 million loan to the City. Instead of giving the loan funds directly

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to the City, however, MLA places them in escrow accounts, out of which the equipment is purchased and the installation paid for directly to Honeywell. The City, acting as MLA's "agent", negotiates and facilitates all aspects of the equipment acquisition and installation of the project, authorizes all payments to Honeywell by MLA, and executes a Certificate of Acceptance acknowledging installation and inspection of the project.

Over seven years, the City will repay the loan amount to MLA with the energy cost savings it enjoys from the new HVAC system.

The loan amount is equivalent to the cost of the equipment and installation, plus some loan costs and interest. MLA, as owner of the equipment, leases the equipment to the City; however, the City may exercise a purchase option for the equipment which is roughly equivalent to the loan amount.

There are two escrow accounts involved in the financing plan. One is the "Project Account", into which MLA must deposit the \$ 2 million project cost and out of which Honeywell is paid. A "Certificates of Participation Account" is also set up. Under the escrow agreement, the City authorizes MLA to sell certificates of participation in its ownership interest in the "lease" with the City. The COP Account will consist of the sums received from the sale of the COPs, interest from the project account, and all "rental" payment made by the City for MLA.

The maintenance portion of the contract, which consists of an additional \$ 1.5 million, is paid directly by the City to Honeywell from general fund money. In this case, the maintenance work consists of work integrally related to the installation of the new system (start up procedures to connect and program the City's energy management computer, install Honeywell monitoring equipment and program Honeywell's computer to track City system functioning), as well as ongoing work that is traditionally termed maintenance.

The \$ 1.5 million maintenance work is paid for with public funds because it is paid directly to Honeywell by the City from general fund monies.

As to the funding for the purchase and installation portions of the project, even though the City has set up an arrangement with a third party to finance the cost of the project, the funds for the project are nevertheless public. The principal aspect of the arrangement is a loan by MLA to the City. This Department has consistently held that loan proceeds take on the character of their recipient.¹ Here, while the

¹ PWCD # 93-005 UCLA Westchester Bluffs, 11/3/93; PWCD # 93-064 Solinas Village Apartments, McFarland, 1/24/94.

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loan proceeds are placed in escrow, the recipient is still the City, whose obligations to Honeywell under the construction contract are paid.

Similarly, the Certificate of Participation Account within the escrow arrangement would also constitute public funds. This Department has found that COPS used to provide a public entity a mechanism for long term financing constitute public funds.²

I hope this satisfactorily responds to your inquiry.

cc: R. W. Stranberg, Chief Deputy Director
Eugene Berkebile, Acting Chief, DAS
Victoria Bradshaw, Labor Commissioner
Dorothy Vuksich, Chief, DLSR
Vanessa L. Holton, Senior Counsel
Henry Richard, Deputy Labor Commissioner

² Oxnard Social Services Building, 11/16/86.